

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS  
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

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**RICK L LOKER**  
Claimant

**PEPSI-COLA OF SIOUXLAND**  
Employer

**APPEAL 23A-UI-02537-SN-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/06/22**  
**Claimant: Respondent (5)**

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Iowa Code §96.5(1) – Voluntary Quit  
Iowa Admin. Code r. 871-24.26(4) – Intolerable / Detrimental Working Conditions  
Iowa Code § 96.3(7) – Recovery of Benefit Overpayment  
Iowa Admin. Code r. 871-24.10 – Recovery of Benefit Overpayment

**STATEMENT OF THE CASE:**

The employer, Pepsi-Cola of Siouxland, filed an appeal from the March 3, 2023, (reference 02) unemployment insurance decision that granted benefits based upon the conclusion he was discharged due to a non-current act of misconduct. The parties were properly notified of the hearing. A telephone hearing was held on March 27, 2023 at 9:00 a.m. The claimant participated and testified. The employer participated through Director of Warehouse and Delivery Operations Jayson Winquist. Official notice was taken of the administrative records.

**ISSUES:**

Was the claimant discharged for disqualifying job-related misconduct?

Whether the claimant has been overpaid benefits? Whether the claimant is excused from repayment of benefits due to the employer's non-participation?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds:

The claimant worked as a full-time delivery customer representative for the employer from December 5, 2022, until he separated from employment on February 6, 2023, when he quit. The claimant's scheduled ran from 5:00 a.m. or 6:00 a.m. to the end of his route on Mondays, Tuesdays, Thursdays, and Fridays. This was typically a 10-hour shift for each of the four days. The claimant's immediate supervisor was Director of Warehouse and Delivery Operations Jayson Winquist.

Shortly after finishing training on December 6, 2022, the claimant noticed that exhaust was leaking into the cabin of the truck. The claimant reported this concern to the mechanic on a maintenance log on December 8, 2022. The employer provided a copy of this maintenance log. (Exhibit 1)

On December 9, 2022, the employer changed several cabin filters and the oil filter at a professional servicer. The employer provided a copy of the invoice dated December 9, 2022. (Exhibit 1) The claimant confirmed this maintenance was conducted at his request. Additional work was conducted to the brakes and remaining items on December 10, 2022. The corrective of the exhaust fumes dissipated after about a week.

On December 21, 2022, the claimant noticed additional exhaust issues with his vehicle. The claimant reported this concern to the mechanic on a maintenance log on December 21, 2022. The employer provided an invoice dated December 29, 2022, showing work was slated to be conducted on the doors and exhaust system for the vehicle. (Exhibit 1) The work was not completed until February 26, 2023.

Over the following weeks, the exhaust issue continued to get worse. The claimant became nauseous from the fumes emanating from inside the cabin daily. Mr. Winquist and the mechanic made the orders, but they could only get them finished using the timetable of the servicer. The claimant was stuffing cloth into the area where the exhaust was leaking to work as a make-shift filter. As Mr. Winquist said during the hearing, "Things were fixed in a timely manner as we can get them in." The claimant was tasked with driving his vehicle until it could be fixed.

On February 6, 2023, the claimant finished his route. The fumes from the exhaust were making him physically sick. The claimant was beginning to think that he would not be able to endure driving the vehicle until it was fixed.

On February 7, 2023, the claimant informed Mr. Winquist he was feeling too ill to work that day. He did not give a further explanation.

On February 8, 2023, Driver Manager Wes Pry asked the claimant if he wanted to work that day. The claimant informed Mr. Pry that he was still feeling too ill, so he would not be taking a voluntary shift on February 8, 2023, a Wednesday.

On February 9, 2023, the claimant was scheduled to work. The claimant did not report to work. Nor did he call in prior to the start of that shift to inform the employer he was sick.

On February 10, 2023, the claimant was scheduled to work. The claimant did not report to work. Nor did he call in prior to the start of that shift to inform the employer he was sick. The claimant did not ever return to working for the employer.

The following section of the findings of fact display the findings necessary to resolve the overpayment issue:

The claimant filed for and received a total of \$2,141.00 in unemployment insurance benefits after his separation from the employer.

On February 22, 2023, Iowa Workforce Development sent a notice of factfinding to the parties informing them of a fact-finding interview on February 28, 2023. Human Resources Manager Amy Larsen participated personally for the employer. The claimant participated personally.

#### **REASONING AND CONCLUSIONS OF LAW:**

The administrative law judge concludes the claimant quit due to intolerable working conditions which makes his quitting attributable to the employer. Since the claimant is entitled to benefits, the overpayment issue need not be evaluated.

The decision in this case rests, at least in part, on the credibility of the witnesses. It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.*

After assessing the credibility of the witnesses who testified during the hearing, reviewing the exhibits submitted by the parties, considering the applicable factors listed above, and using his own common sense and experience, the administrative law judge finds both parties are credible regarding certain allegations and not credible regarding others.

First, the administrative law judge finds the claimant's allegation that he was terminated by Mr. Winquist on February 6, 2023, not credible. He makes this finding because the claimant conceded several events that are inconsistent with that version of events. For instance, the claimant was called by Mr. Pry on his day off regarding taking a voluntary shift on February 8, 2023. This is inconsistent with being terminated.

Second, the administrative law judge finds the employer's allegation that the claimant did not inform the employer about the exhaust issue not credible. The employer's own exhibits appear to show the issue was brought to the attention of the employer twice. First around the time of the claimant's hire on December 9, 2022, and then on December 29, 2022. The delivery date on this second invoice shows the claimant's vehicle was leaking exhaust from December 21, 2022 to the end of his employment.

Iowa Code §96.5(1) provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

Claimant had an intention to quit and carried out that intention by tendering a written resignation. As such, claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code § 96.6(2). "Good cause" for leaving employment must be that which is reasonable to the average person, not the overly sensitive individual or the claimant in particular. *Uniweld Products v. Indus. Relations Comm'n*, 277 So.2d 827 (Fla. Dist. Ct. App. 1973).

"Good cause attributable to the employer" does not require fault, negligence, wrongdoing or bad faith by the employer. *Dehmel v. Employment Appeal Bd.*, 433 N.W.2d 700, 702 (Iowa 1988)("[G]ood cause attributable to the employer can exist even though the employer is free from all negligence or wrongdoing in connection therewith"); *Shontz v. Iowa Employment Sec. Commission*, 248 N.W.2d 88, 91 (Iowa 1976)(benefits payable even though employer "free from fault"); *Raffety v. Iowa Employment Security Commission*, 76 N.W.2d 787, 788 (Iowa

1956)(“The good cause attributable to the employer need not be based upon a fault or wrong of such employer.”). Good cause may be attributable to “the employment itself” rather than the employer personally and still satisfy the requirements of the Act. *Raffety*, 76 N.W.2d at 788 (Iowa 1956).

The administrative law judge finds the claimant quit by failing to return to work for the employer. Rather than being terminated as the claimant construes it, the administrative law judge finds the claimant thought he was facing intolerable and detrimental working conditions if he continued to work for the employer.

Generally, notice of an intent to quit is required by *Cobb v. Employment Appeal Board*, 506 N.W.2d 445, 447-78 (Iowa 1993), *Suluki v. Employment Appeal Bd.*, 503 N.W.2d 402, 405 (Iowa 1993), and *Swanson v. Employment Appeal Bd.*, 554 N.W.2d 294, 296 (Iowa Ct. App. 1996). These cases require an employee to give an employer notice of intent to quit, thus giving the employer an opportunity to cure working conditions. Accordingly, in 1995, the Iowa Administrative Code was amended to include an intent-to-quit requirement. The requirement was only added, however, to rule 871-24.26(6)(b), the provision addressing work-related health problems. No intent-to-quit requirement was added to rule 871-24.26(4), the intolerable working conditions provision. Our supreme court concluded that, because the intent-to-quit requirement was added to 871-24.26(6)(b) but not 871-24.26(4), notice of intent to quit is not required for intolerable working conditions. *Hy-Vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1 (Iowa 2005).

Iowa Admin. Code r. 871-24.26(2) and (4) provide:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

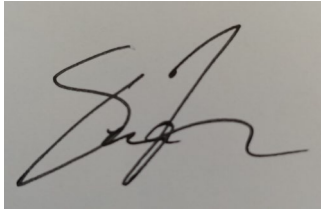
- (2) The claimant left due to unsafe working conditions.
- (4) The claimant left due to intolerable or detrimental working conditions.

The standard of what a reasonable person would have believed under the circumstances is applied in determining whether a claimant left work voluntarily with good cause attributable to the employer. *O'Brien v. Employment Appeal Bd.*, 494 N.W.2d 660 (Iowa 1993).

In this case, a reasonable person would have believed that claimant’s working conditions were unsafe, intolerable, and detrimental. An exhaust leak is a dangerous condition that can threaten the life and health of the driver. Vehicle exhaust contains carbon monoxide gas. Breathing in carbon monoxide gas can lead to black outs and potentially even death from asphyxiation. It could also lead to a serious motor vehicle accident occurring during the black out. The administrative law judge finds the record supports this issue was brought to the employer’s attention at least twice. Whether a claimant reports the desire to quit due to these conditions is not required, but it can undermine the reasonability of a voluntary resignation under certain circumstances. The administrative law judge finds no issue here because the claimant had previously made management aware and the condition was especially dangerous. Benefits are granted, provided the claimant is otherwise eligible for benefits. Since the claimant is entitled to benefits, the overpayment issue need not be evaluated.

**DECISION:**

The unemployment insurance decision dated March 3, 2023, (reference 02) is MODIFIED WITH NO CHANGE IN EFFECT. The claimant voluntarily quit the employment with good cause attributable to the employer. Benefits are allowed, provided he is otherwise eligible.

A rectangular box containing a handwritten signature in black ink. The signature is stylized and appears to read 'Sean M. Nelson'.

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Sean M. Nelson  
Administrative Law Judge II  
Iowa Department of Inspections & Appeals  
Administrative Hearings Division – UI Appeals Bureau

March 30, 2023  
Decision Dated and Mailed

smn/scn

**APPEAL RIGHTS.** If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board  
4<sup>th</sup> Floor – Lucas Building  
Des Moines, Iowa 50319  
Fax: (515)281-7191  
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

**AN APPEAL TO THE BOARD SHALL STATE CLEARLY:**

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

**Note to Parties:** YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

**Note to Claimant:** It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

**SERVICE INFORMATION:**

A true and correct copy of this decision was mailed to each of the parties listed.

**DERECHOS DE APELACIÓN.** Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board  
4th Floor – Lucas Building  
Des Moines, Iowa 50319  
Fax: (515)281-7191  
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

**UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:**

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

**Nota para las partes:** USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

**Nota para el reclamante:** es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

**SERVICIO DE INFORMACIÓN:**

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.